



REPORT OF INVESTIGATION

File Number: 04-058

Agency: Office of the Governor

Basis for Investigation: Newspaper Articles

Allegations: Contract Irregularities in Revenue Maximization Project

Date Opened: October 2, 2003

Investigated By: Deputy Inspector General Jeff DeLancey
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OFFICE OF THE INSPECTOR GENERAL



File Number: 04-058

EXECUTIVE SUMMARY

In 1999, the State of Georgia initiated a project to maximize revenues from Federal Medicaid programs through the use of highly specialized contract consultants. The project involved several state agencies including the Department of Community Health (DCH), Department of Juvenile Justice, Department of Human Resources, Office of School Readiness, and other agencies to a lesser degree. In 2003, a series of articles appeared in The Atlanta Journal Constitution newspaper that questioned the validity of a contract settlement with the primary vendor as well as the success of the vendor's performance. Based on the issues raised in these articles, the Office of Inspector General (OIG) initiated an investigation into the allegations presented.

The OIG investigation involved reviewing available documents related to the project and conducting numerous interviews with those associated with the project. The results of the investigation indicated the following:

- The Department of Administrative Services (DOAS) with the Department of Community Health (DCH) developed the Request for Proposal (RFP) for vendor selection. The DOAS contracting officer believed the contract award was in compliance with DOAS rules and guidelines. There is no significant information to indicate any fraud or corruption in the contract award;
- The Office of Planning and Budget of the former Governor's Office participated in the bid process negotiations, vendor compensation percentage, and the final vendor selections. While such participation by the Governor's Office is not prohibited and may have been warranted in this fast-track, high dollar value procurement, such participation was unusual. There is no significant evidence to show partiality on the part of Governor Barnes' office to any of the contractors;
- The DCH senior administrators did not establish benchmarks (criteria used to determine the amount of vendor compensation). The failure to establish benchmarks and the lack of effective communication between senior DCH staff and the main contractor led to the eventual termination of the contract and settlement negotiations. In general, DCH staff were of the opinion that the contractor had few new ideas and the contractor was seeking credit for implementation of

methodologies that DCH staff already had under consideration or was in the process of implementing;

- On behalf of the DCH, the Georgia Department of Law (Attorney General's Office), in coordination with the Governor's Executive Counsel, negotiated a final settlement. A key factor in the settlement was the absence of any formal rebuttal to the benchmarks proposed by the contractor or any proposed benchmarks by DCH. The settlement amount was not unreasonable under the circumstances. While the dollar amount of more than eighty million dollars (\$80,000,000.00) is a large sum of money, it is only approximately eight percent (8%) of the one billion dollars (\$1,000,000,000.00) in additional revenues the GAO report attributed to the vendor's maximization efforts that were received by the state during the time of the contract. There is no substantive evidence to show that the settlement amount was unreasonable.
- An independent investigation by the federal government's General Accounting Office (GAO) completed on June 20, 2005, found that the claims made under the contract were permissible under plans that had been approved by the responsible federal agency. The GAO acknowledged that contingency fee contracts are allowed under existing law but added that the contracts are problematic. The GAO report GAO-05-748 can be found at: www.gao.gov/atext/d05748.txt.

The OIG offers the following recommendations. They are global in nature and should be considered throughout state government in contract considerations.

1. State agencies should be reminded of the importance of contract monitoring. Consideration should be given to a mandatory requirement for formal contract monitoring for high dollar contracts. The Department of Audits and Accounts has issued an excellent report entitled "Components of an Effective Contract Monitoring System." It can be viewed at: www.audits.state.ga.us under the reports tab. The importance of documentation of issues of contract performance and nonperformance, both to satisfy contract requirements and support payments cannot be over emphasized.

2. The use of contingent fees for contractors should be avoided. Their use to increase Medicaid reimbursement remains controversial despite the fact the Federal government still allows the states to do it.



Report of Investigation

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Summary of Actions 04-058

I. Basis for Investigation

In October 2003, the Office of the State Inspector General initiated this investigation based upon articles published in The Atlanta Journal-Constitution (AJC) in February, August and September 2003. The articles raised issues of possible improprieties in the State of Georgia's Revenue Maximization (Rev Max) Project since the program's inception in 1999.

II. Narrative

A. The four major allegations in the newspaper articles are as follows:

1. The Department of Administrative Services (DOAS) awarded contracts for Revenue Maximization without following the prescribed process for contract proposals and vendor selection. Most significantly, after the technical portion of the proposals were reviewed, the Governor's Office inappropriately assumed responsibility to review the price portion of the proposals and then to make the final vendor selections.
2. The State did not select for the largest portion of the contract, the qualified vendor who submitted the lowest cost proposal.
3. During the multi-year scope of the project, the Department of Community Health (DCH) formed the opinion that one of the contract vendors was noncompliant, requested that the vendor be terminated, but the request for termination was improperly refused by someone in the Governor's Office.
4. DCH, the primary agency involved in the contract, believed the final settlement of \$81,122,457.00 was excessive.

Since the late 1980s and early 1990s approximately nine states initiated the revenue maximization concept. The revenue maximization concept uses outside private consultants on a flat fee or contingent fee basis to provide advice to state government agencies to maximize state revenues from Medicaid and Medicare reimbursements. The consultant's advise how to file claims to utilize all possible and permissible methods of cost calculations and the upper limits of reimbursements in order to maximize the state's Medicaid reimbursement from the federal government. The outside consultants also show the state agency employees additional claims that can be filed in areas that the state agency had not previously filed claims.

In most cases, the consultants are paid a contingent fee based upon the additional revenues that the state receives by implementing the consultant's recommendations.

B. In 1999, the Office of the Governor of Georgia formed a committee to explore the revenue maximization concept and ultimately to prepare the criteria for a request for proposal (RFP) to select a vendor to provide the revenue maximization expertise. The committee consisted of staff from the Governor's Office, the Office of Planning and Budget (OPB), the Department of Administrative Services (DOAS), the Department of Juvenile Justice, and, the Department of Community Health (DCH). Another agency, the Department of Human Resources (DHR), although not a member of the committee did provide some input.

C. The narrative will address each allegation, the results of the investigation and the finding relating to each one.

Allegation 1: The Department of Administrative Services (DOAS) awarded contracts for Revenue Maximization without following the prescribed process for contract proposals and vendor selection. Most significantly, after the technical portion of the proposals were reviewed, the Governor's Office inappropriately assumed responsibility to review the price portion of the proposals and then to make the final vendor selections.

The RFP process is a method by which state contract proposals are evaluated and awarded. The initial step of the RFP process is to develop and identify specifications and components desired in the contract. After contract elements and requirements are prepared and bids are posted and received from interested vendors, the typical contract process involves having an evaluation committee examine the elements of each qualified vendor's proposal. This examination is for the technical qualifications only; no pricing is reviewed. Once the evaluation committee reviews all of the vendors, scores are generated to rank each vendor on the technical portion of the proposal. The technical portion scores usually count for 70 to 80 percent of the total vendor score.

Once the technical portion of the scores is completed, the evaluations are returned to the DOAS contracting officer. Based on the technical scores, DOAS typically returns the evaluations for the top two or three vendors to the committee along with the pricing proposals. The committee then evaluates the vendor pricing and prepares a combined overall vendor score, based on both technical evaluation and pricing. The committee may solicit further information from vendors after which the contract is awarded to the selected vendor. Lowest price and technical scores are criteria in the evaluation of a vendor. Neither one however, is a controlling criterion in the RFP selection process.

DOAS purchasing procedures, and Georgia Code Section 50-5-67, describe the processes and procedures for preparing contracts and issuing requests for bid or

proposal. Services of the type involved in the revenue maximization project are not required to have a public notice or to be competitively bid.

Section 4.5.2, of the RFP for this contract, #0422-020-024028, detailed the composition of the evaluation team. Section 4.5.3 described the evaluation process, both for the technical evaluation and for the cost proposals. This section also contains formulas for calculating scores for both the technical and cost sections of the proposals.

In mid-2004, the Office of the Inspector General (OIG) interviewed Mr. Charles Brooks, III, DOAS, the contracting officer for this project, and Ms. Brenda Purcell, OPB, the employee member and chairperson of the evaluation team for the RFP. Ms. Purcell had also been involved with the initial committee to develop the specifications and requirements for the project that ultimately were the basis for the RFP.

Both Mr. Brooks and Ms. Purcell said that once the elements of the RFP were developed, the process for advertising the RFP, follow-up with vendor conferences, and receipt of proposals followed the standard administrative requirements. In the usual and typical manner, the evaluation team members individually examined and scored the technical portion of the proposals, calculated an average score for each vendor and submitted the results to Mr. Brooks at DOAS.

Ms. Purcell stated that once the technical scores had been sent to DOAS, she expected to receive the cost proposals and that the evaluation team would then review them, combine them with the technical scores on a percentage basis that was specified in the RFP and recommend the vendor(s) to be selected. That was the typical process that she had experienced in many years of procurement bidding. Instead, she stated that Mr. Chuck Meadows, deputy policy advisor in the Governor's Office, told her the evaluation committee would have no further involvement in the process and that the Governor's Office would handle the pricing evaluation and vendor(s) selection.

Mr. Brooks, DOAS, stated that after receiving the technical scores from the evaluation team he understood that OPB and the Governor's Office would do the pricing evaluation and vendor selection.

During an interview of Mr. Joseph Kim, Director of Legal Services, DOAS, regarding the administrative process for vendor selection, he provided the following information.

Mr. Kim stated that in the usual RFP process, an evaluation team examines the vendors' technical proposals. The pricing proposal for the highest vendors' scores on the technical evaluation can be reviewed by the contract officer or by the evaluation team with the contract officer.

The primary role of DOAS in the RFP and vendor selection process is to assure that the administrative functions are carried out. DOAS also serves as the communications point between prospective vendors and the selecting agency.

The RFP detailed the formula that was to be used in rating the technical portion and the pricing portion of the vendors' proposals. Mr. Brooks stated that he believes he prepared the pricing rating by using the RFP formula and forwarded it to the Governor's Office with the technical portion of the evaluation. No records of the pricing process were found in the contract file. Mr. Brooks had no personal copies of the transaction.

Mr. Kim stated DOAS did not have any responsibility for measuring the contract deliverables. He advised that the contracting agency had the responsibility to evaluate and monitor the vendor's performance. Mr. Kim added that the goal of DOAS in contract administration is to ensure that all administrative elements of a contract have been met and that there is consistency in the evaluation process.

Several interviewees who had extensive purchasing experience with major state projects expressed that this RFP was the first time they had seen a Governor's Office take over a portion of the vendor selection process. There is however, no Georgia statute or DOAS regulation or guideline that would prohibit the Governor's Office from assuming responsibility for a vendor selection.

In a memorandum (Exhibit 2) submitted by Mr. Howard Mead of the Governor's Office, he states that, "The fee evaluation process could not follow the terms of the bid request because the fee proposals submitted were complicated and incompatible with an 'apples to apples' comparison." The fee proposals were at different percentages for different programs over dissimilar periods of time, two or three years. Therefore, because of the complexity and some perceived lack of initiative on the part of the primary agency, the Governor's Office assumed responsibility for the follow-up on the fee evaluation process. Mr. Mead upon taking over the fee evaluation process requested and received from the two vendors fee proposals that could be compared.

The vendor with the highest overall technical score and highest score in four of the five technical categories in the RFP received about a third of the total contract and another vendor with the highest technical score on only one part, Medicaid, received about two-thirds of the total contract.

Finding: *The first allegation is unfounded. Although the price negotiations were handled by staff in the Governor's office and not the evaluation team as had historically been the case, there is no substantial information to indicate that any of these actions were outside the legal authorities of the Office of the Governor.*

2. Allegation 2: *The qualified vendor who submitted the lowest cost proposal was not selected for the largest portion of the contract.*

After the initial committee had established criteria to be included in the RFP, DOAS finalized the process and released the RFP to the public. The Revenue Maximization Project RFP received proposals from nine vendors. The RFP contained five sections. Six of the vendors submitted proposals for only portions of the total RFP technical section and were eliminated from consideration for various reasons. Of the three vendors who submitted proposals for all five portions, the total average scores were 486.98, 475.79 and 276.58

As described in Section 4.5.3 of the RFP, the technical portion of the evaluation consists of 60 percent of the total overall score and the cost proposal consists of 40 percent of the overall score for the potential vendors.

For this project, the overall highest rated technical score vendor also had the lowest projected pricing of 8.5 percent. The vendor that was second in overall technical scores had a projected pricing percentage of 12.9 percent.

As previously indicated, the typical final vendor score is based on the technical portion of the evaluation and on the pricing portion of the submission. The two sections are combined based on a weighted average as specified in the RFP.

In his memo (Exhibit 2), Mr. Mead of the Governor's Office states that he believed the final negotiated fee of the selected vendor for the main Medicaid work was lower, not higher, than that vendor's initial fee proposal for the work and lower than the competitor's final offer.

Finding: *The second allegation is found to be correct. In an RFP however, lowest price is not a controlling criterion in the RFP selection process. No evidence was discovered to indicate an improper relationship between the Governor's staff and the vendor selected for the majority of the work.*

Allegation 3. During the multi-year scope of the project, the Department of Community Health (DCH) formed the opinion that one of the contract vendors was noncompliant, requested that the vendor be terminated, but the request for termination was improperly refused by someone in the Governor's Office.

On August 11, 2004, the Office of the Inspector General interviewed Mr. Russ Toal. Mr. Toal was Commissioner of the Department of Community Health from July 1999 until August 2001. He had previously been employed with the predecessor agency, the Department of Medical Assistance.

Regarding the Revenue Maximization Project, Mr. Toal said that this initiative was discussed nationwide. This particular project was generated by the Governor's Office and OPB. The development of the RFP was conducted by OPB; he did not participate personally in this process. Mr. Toal was not aware of how many proposals were considered or by whom they were submitted. He had two representatives on the RFP evaluation team, Mr. Gary Redding, his deputy director, and Mr. Sean Cucchi.

Once the contract was prepared, Mr. Toal said he felt the wording was too broad and questioned some of the terminology contained in the contract. He also felt that the payment rate was too high. Despite his concerns however, Mr. Toal on behalf of DCH approved and signed the contract.

Mr. Toal questioned the benchmarks that were to be used to establish payment levels, and up to the time he left DCH, this issue had not been resolved. Additionally, during his tenure as DCH commissioner, no payments were made to one vendor. During the summer of 2001, he stated he submitted a written recommendation, possibly an e-mail, that the contract with the major vendor be terminated for non-performance. A copy of the referenced written communication was not produced. Mr. Toal said he met with Renay Blumenthal and Bobby Kahn of the Governor's office about the contract termination.

Mr. Toal stated that he experienced resistance from OPB and the Governor's office in his attempt to control the activities and claims from the vendor. He said this contract was the only one he had ever seen in which he was encouraged to make payments to the contractor.

Mr. Toal was shown a memo dated August 9, 2000, in which the vendor claimed there was an understanding reached about the method to calculate the contingent fee for payments for Upper Payment Limit benchmarks. Mr. Toal said that DCH never agreed to this benchmark. He further stated that it was a common tactic by the vendor to have a meeting in which no agreement was reached, and then generate a memo which indicated that they had reached an agreement. According to Toal, these types of memos were usually favorable to the vendor.

On August 17, 2004, the OIG interviewed Mr. Gary Redding. Mr. Redding was Commissioner of the DCH from September 2001 until 2003. He had previously been employed as acting commissioner of the Department of Human Resources. Prior to that appointment, he had been Medicaid director at DCH.

Mr. Redding was on the steering committee of this project as the DCH representative. The steering committee reviewed the subprojects, or contract amendments, that were proposed by the vendor. Once approved, the committee was responsible for monitoring, compliance and for reviewing and approving benchmarks. Mr. Redding stated that to his knowledge, the committee never reached an agreement with the majority vendor regarding benchmarks on any of the subprojects.

One of the major areas of disagreement between the steering committee and the majority vendor involved the project to increase reimbursements by recalculating the charges for services to take better advantage of the Upper Payment Limits (UPL) with Intergovernmental Transfers. Mr. Redding said that a change in federal UPL reimbursements to 150 percent of Medicare rates from 100 percent of rates resulted in additional federal funds being received by the state. Mr. Redding believed the vendor did nothing to effect this change in the law.

Accordingly, Mr. Redding did not want to give the vendor any fee for these additional revenues. In Mr. Redding's view any benchmark threshold would require these federal funds be included, so fee calculation for the vendor would be above this level. Mr. Redding recalled that in spring or summer 2002, there were discussions and negotiations about the UPL benchmark.

Mr. Redding stated that in the summer of 2002, he and the committee received a payment schedule from the Governor's Office. DCH maintained that the majority vendor should be paid a contingency fee of approximately twelve million dollars (\$12,000,000.00). Mr. Redding believed that the vendor may have been entitled, at the most, to an additional fee between four and eight million dollars (\$4,000,000 and \$8,000,000) for any additional work. In the payment schedule from the Governor's Office, DCH was to pay approximately \$25 million. Mr. Redding did not agree with the payment schedule.

Finding: As the head of the contracting agency, DCH, Mr. Toal did come to the conclusion to terminate the contract with the majority vendor. Mr. Toal had the authority to terminate the contract but did not exercise his authority. Mr. Toal's reason for not terminating the contract is that people in the Governor's office advised him not to do so because they did not believe it was appropriate. There is no evidence that the Governor or his staff had any authority to overrule Mr. Toal's decision to terminate the contract. The preponderance of the evidence is that Mr. Toal changed his decision after discussing the issue with members of the Governor's staff.

Allegation 4: DCH, the primary agency involved in the contract believed the final settlement of \$81,122,457.00 was excessive.

The revenue maximization contract was segmented for specific individual projects. Each project was recognized as a subproject of the master contract. Each subproject contained specific criteria to be accomplished.

Appendix "A", To the Contract, identifies additional terms of contract requirements. In part, the appendix reads:

"In order to properly define the scope of work and establish the methodology for payment for each subproject of the Contractor's Proposal, the parties agree that any services rendered by and any payments made to Contractor pursuant to the Contract must be approved by the Steering Committee (as defined herein) in accordance with the procedures set forth below."

'A. Steering Committee

For purposes of this Contract, the "Steering Committee" shall be comprised of no less than four (4) members, with at least one member each from DHR, DJJ, GCH and the Governor's Office ("GO"). Each of these members shall be nominated by their

respective agencies and approved by the GO. The GO may appoint additional members to the Steering Committee, at its sole discretion, to meet its business objectives. The Steering Committee shall be responsible for overseeing and approving the development and implementation of each subproject of the Contractor's Proposal under this contract.

'B. Procedure for Approval

Prior to the initiation of any services of the Contractor's Proposal pursuant to this contract, the Contractor shall present to the Steering Committee for its approval the specific scope of work for each subproject, a timeline for completion of each subproject, the Contractor's payment methodology for each subproject, and any other information requested by the Steering Committee. If approved by the Steering Committee, the scope of work, timeline and payment methodology and other information shall be in writing, signed by the duly authorized representatives of the Contractor and Steering Committee, and shall become an amendment to this Contract as set forth in Section 30 of the above Contract.

For purposes of establishing the Contractor's payment methodology for each subproject, the Contractor and Steering Committee must mutually agree in writing on specific benchmarks which distinguish clearly between (i) those amounts that should be credited to the State's previous collections and projected amounts for future collections of applicable federal funds (and therefore excluded from the Contractor's payment determination) and (ii) those amounts which will be increases in applicable federal funds as a result of the Contractor's services pursuant to this Contract (and therefore included in the Contractor's payment determination)."

The Revenue Maximization Project was in effect from 1999 to 2003. During this time, benchmarks were never established. According to DCH, the majority contractor never provided reasonable benchmark criteria and did not create many programs or recommendations that were effective or useful. Thus, according to DCH, very limited additional revenues were generated. According to the majority contractor, DCH did not formally reject or propose an alternative to its recommended benchmarks. Instead, DCH, according to the vendor, acquiesced to benchmarks the vendor produced that showed the generation of additional revenues. Additionally, the majority contractor claimed that DCH "left money on the table" (regarding claims for federal funds) by failing to implement some of its recommendations.

Without established benchmarks, it is difficult, if not impossible, to quantify the amount of additional federal funds that could be attributed to the majority contractor's efforts. The lack of benchmarks led to the dispute as to the exact

contribution of the majority contractor to the additional revenues obtained by the state.

The Steering Committee had the overall responsibility “for overseeing and approving the development and implementation of each subproject of the Contractor’s Proposal under this contract.” This responsibility included the establishment of appropriate benchmarks, since this requirement was included in each subproject that was signed by a Steering Committee manager. The Steering Committee did not fulfill all of its responsibilities.

Finding: *The settlement amount was not unreasonable under the circumstances. While the dollar amount of more than eighty million dollars (\$80,000,000.00) is a large sum of money, it is only approximately eight percent (8%) of the one billion dollars (\$1,000,000,000.00) in additional revenues the GAO report attributed to the vendor’s maximization efforts that were received by the state during the time of the contract.*

III. Conclusion

In 1999, the State of Georgia initiated a project to maximize revenues from the Federal Medicaid program through the use of highly specialized contract consultants. The project involved several state agencies including the Department of Community Health (DCH), Department of Juvenile Justice, Department of Human Resources, Office of School Readiness, and other agencies to a lesser degree.

As a result of threatened litigation, in late 2003 a settlement was developed between the State of Georgia and the primary vendor for fees relating to this project. The final negotiated fee was for a total project payment of \$81,122,457.00 for the DCH portions of the contract. In 2003, a series of articles appeared in The Atlanta Journal Constitution newspaper that questioned the validity of a contract settlement with the primary vendor as well as the success of the vendor’s performance.

The OIG investigation involved reviewing available documents related to the project and conducting numerous interviews with those associated with the project. The results of the investigation indicated the following:

There is no significant information to substantiate any fraud, corruption or failure to comply with applicable law and rules in the contract award;

There is no significant evidence to show partiality on the part of Governor Barnes’ office to the majority contractor;

The Department of Community Health (DCH) senior administrators did not establish benchmarks (criteria used to determine the amount of vendor compensation). The failure to establish benchmarks and the lack of effective

contract monitoring of the main contract led to the eventual breakdown in the contract and the settlement negotiations;

While the dollar amount of the settlement is more than eighty million dollars (\$80,000,000.00), there is no substantive evidence to show that the settlement amount was, under the circumstances, unreasonable.

An independent investigation by the federal government's General Accounting Office (GAO) completed on June 20, 2005, found that the claims made under the contract were permissible under plans that had been approved by the responsible federal agency. The GAO acknowledged that contingency fee contracts are allowed under existing law but added that the contracts are problematic. The GAO report GAO-05-748 can be found at: www.gao.gov/atext/d05748.txt.

IV. Recommendations

1. State agencies should be reminded of the importance of contract monitoring. Consideration should be given to a mandatory requirement for formal contract monitoring for high dollar contracts. The Department of Audits and Accounts has issued an excellent report entitled "Components of an Effective Contract Monitoring System." It can be viewed at: www.audits.state.ga.us/internet under the reports tab. The importance of documentation of issues of contract performance and nonperformance, both to satisfy contract requirements and support payments cannot be over emphasized.
2. The use of contingent fees for contractors should be avoided. Their use to increase Medicaid reimbursement remains controversial and despite the fact the Federal government still allows the states to do it.